

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 15555 of 2007(B)

PETITIONER:

ARASI VIJAYAKUMAR,
'DHRUVAM", THIRUVALLAM P.O.,
THIRUVANANTHAPURAM, REPRESENTED BY THE
POWER OF ATTORNEY HOLDER, K.KRISHNANKUTTY.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY THE SECRETARY,
THIRUVANANTHAPURAM.
3. N.RAJASEKHARAN NAIR,
SOUTH OVER BRIDGE, M.G.ROAD,
THIRUVANANTHAPURAM.

R1 BY GOVERNMENT PLEADER SRI. K.J.MOHAMMED ANZAR

R2 BY SRI. N.NANDAKUMARA MENON, SC, TVM CORPN.

R3 BY ADV. SRI.R.S.KALKURA

SRI.M.S.KALESH

SRI.HARISH GOPINATH

SRI.V.VINAY MENON

SRI.KIRAN SANKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12/11/2007,THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

KSS

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE ORDER G.O.(RT) NO.336/2000/LSGD.DTD. 22/01/2000.**
- EXT.P2: COPY OF THE JUDGMENT IN O.P.NO.33093/2000 OF THIS HON'BLE COURT DTD. 27/03/2001.**
- EXT.P3: COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE GOVERNMENT DTD. 8/04/2003.**
- EXT.P4: COPY OF THE LETTER NO.19724/E2/01/LSGD DTD.7/08/2003.**
- EXT.P5: COPY OF THE ORDER G.O.(RT) NO.260/03/LSGD. DTD. 16/07/2003.**
- EXT.P6: COPY OF THE JUDGMENT IN WP(C) NO.27946/03 DTD. 11/12/2006 OF THIS HON'BLE COURT.**
- EXT.P7: COPY OF THE ORDER IN RP.NO.49/2007 DTD. 6/03/07 OF THIS HON'BLE COURT.**
- EXT.P8: COPY OF THE ORDER G.O.(RT) NO.1323/2007/LSGD DTD. 28/04/2007.**
- EXT.P9: COPY OF THE REGULARISATION NO.9621 DTD. 2/07/07 AND PLAN.**

3RD RESPONDENT'S EXHIBITS:

- EXT.R3(A): COPY OF SALE DEED NO.679/1999 DTD. 24/02/1999.**
- EXT.R3(B): COPY OF SALE DEED NO.680/1999 DTD. 24/02/1999.**
- EXT.R3(C): COPY OF SALE DEED NO.380/2003 DTD. 27/01/2003.**
- EXT.R3(D): COPY OF THE REPORT NO.13/03 DTD. 06/01/2003 ISSUED BY THE FIRE FORCE.**
- EXT.R3(E): COPY OF THE ORDER DTD. 12/08/2003 ISSUED BY THE CORPORATION AUTHORITIES.**
- EXT.R3(F): COPY OF THE PERMIT DTD. 20/08/2003 ISSUED BY THE CORPORATION AUTHORITIES.**

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- EXT.R3(G): COPY OF THE PROPERTY TAX RECEIPT DTD. 18/02/2003.**
- EXT.R3(H): COPY OF THE INDEX SHEET AND THE ASSESSMENT ORDER DTD. 22/07/202.**
- EXT.R3(I): COPY OF THE NOTICE DTD. 09/03/1999 ISSUED BY THE CORPORATION AUTHORITIES.**
- EXT.R3(J): COPY OF THE NOTICE DTD. 23/06/1999 ISSUED BY THE CORPORATION AUTHORITIES.**
- EXT.R3(K): COPY OF THE APPLICATION DTD. 31/12/1999 SUBMITTED BY THE 3RD RESPONDENT FOR REGULARIZATION OF THE UNAUTHORIZED CONSTRUCTION.**
- EXT.R3(L): COPY OF G.O.(RT) 336/2000/LSGD DTD. 22/01/2000.**
- EXT.R3(M): COPY OF THE JUDGMENT IN O.P.NO.33093 OF 2000 DTD. 27/03/2001.**
- EXT.R3(N): COPY OF THE PROCEEDINGS NO.G.O.(RT) NO.2600/2003 DTD. 16/07/2003.**
- EXT.R3(O): COPY OF THE PLAN AND ORDER OF REGULARIZATION NO.9621 DTD. 02/07/2007.**
- EXT.R3(P): COPY OF THE COMMISSION REPORT IN OP.NO.10712/1999.**

/TRUE COPY/

P.S.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C)No. 15555 OF 2007

DATED THIS THE 12th November, 2007

J U D G M E N T

The case of the petitioner in this writ petition under Article 226 of the Constitution is that he is the absolute owner of 4.70 cents of land in Survey No.1034/1-3 in Vanchiyoor Village, Thiruvananthapuram Taluk. Having purchased the same from one Dhanalakshmi and he has constructed a building on the said property which is situated adjacent to Azad Hotel at Pazhavangadi, Thiruvananthapuram. On the western side of that property one Rajalakshmi owned two cents of land with buildings T.C.No. 38/1607 and 38/1608 thereupon. Substantial portions of Rajalakshmi's land and building was acquired for widening the M.G.Road and after acquisition she left with just 600sq.links of land on the side of the six lane M.G.Road. She sold the above vacant plot of 600 sq.links without any building to one Antony Fernandez who conveyed that property to the third respondent. The third respondent it is alleged unauthorisedly constructed two shop rooms without any licence from the Corporation and trespassing into the petitioner's property. The second respondent corporation issued provisional order for demolishing the unauthorised construction of the

third respondent. He in the meanwhile could manage to pay tax to the corporation in respect of the demolished buildings so as to make it appear that the construction was in existence even after the acquisition proceedings. Later on finding of the truth, the 2nd respondent Corporation cancelled the assessment and deleted the door number of the building from the records of the Corporation, rejected the third respondent's application for transfer of ownership and issued final order of demolition under Section 406 of the Municipalities Act. Against the corporation's order, the third respondent preferred an appeal to the first respondent State. This Court in O.P.No.23629/1999 directed an early disposal of that appeal and accordingly the first respondent passed an order Ext.P1 holding that the constructions made were unauthorised and that the action of the Corporation was perfectly in order. In those proceedings, the petitioner's predecessor had submitted a statement pointing out the illegal constructions made by the third respondent abutting into her property. The Government accordingly approved the action of the Corporation rejected the third respondent's request for transfer of ownership. In the meanwhile, the third respondent filed an application for regularization of the illegal constructions made by him. This was rejected by the corporation. Challenging this order, the third respondent filed O.P.No.33093/2000. That O.P. was heard by this Court along with O.P.No.7072/20021 .

While another person who had made some illegal construction in another portion of the acquired land, both the O.Ps.were disposed of by this Court by a common judgment, Ext.P2. Under Ext.P2 the order rejecting the application for regularisation was upheld. According to the petitioner, the unauthorized constructions put up by the third respondent ought to have been demolished by the 2nd respondent, but it has not been done though the Corporation was requested to demolish those unauthorized constructions. By that time the petitioner came to know the third respondent was exerting influence over the Government official for getting regularisation of the unauthorized constructions. The petitioner accordingly submitted Ext.P3 representation before the Government requesting not to pass any order of regularisation. To the petitioner's surprise, the petitioner received Ext.P4 reply from the Government informing that the Government has passed G.O.(Rt)No.2600/03/LSGD dated 16-7-2003 regularising the third respondent's unauthorized constructions. Ext.P5 is the copy of the above Government Order which the petitioner could obtain only with great difficulty. Ext.P5 was challenged by this Court. This Court directed the Government to take a fresh decision after taking into account the implications of Ext.P1 order and more importantly Ext.P2 judgment. Ext.P6 is copy of the judgment of this Court in W.P.C.No.27946/2003 filed against Ext.P5. Though the third

respondent filed a petition for review of Ext.P6, this Court dismisses the same and Ext.P7 is the copy of the order dismissing the review petition. Pursuant to Ext.P6 & Ext.P7, the Deputy Secretary to the Government heard the matter and has passed Ext.P8 order directing regularisation of the illegal constructions subject to certain conditions. It was challenging Ext.P8 that this writ petition was originally filed by the petitioner but during the pendency of the writ petition it was understood that the third respondent has obtained order of regularisation on the basis of Ext.P8. Ext.P9 is the copy of that order. Accordingly, incorporating grounds of challenge against Ext.P9, the writ petition was amended and the relief sought for in the amended writ petition is for a writ of certiorari quashing Exts.P8 and P9 directing the second respondent to demolish the illegal constructions made by the third respondent.

2. The third respondent has filed a very detailed counter affidavit denying allegations and averments of the writ petitioner. It is claimed that the third respondent is the absolute owner in possession of 600 Sq.links of land comprised in Sy.No.1032/1-2-2 of Venchiyoor village by virtue of two sale deeds, Exts.R3(a) and R3(b) executed on 24-02-1999. It is submitted that at the time of Ext.R3(a)

and R3(b), there was a building in the property bearing door Nos.T.C.Nos.38/1607 and 38/1608 and that the third respondent had commenced a cool drink bar and a tea stall in that building. It is contended that for the purpose of widening of the M.G.Road near over bridge only portions of the property was acquired covered by Exts.R3(a) and R3(b) and after acquisition there remained 600 links of land and portions of the building under the ownership of Smt.Rajalakshmi, previous owner. The remaining portion of 600 sq.links and portions of the building which existed therein was transferred by the aforesaid Rajalakshmi in favour of Antony Fernandez and thereafter transferred and conveyed the property in favour of 3rd respondent vide Exts.R3(a) and R3(b) sale deeds. The allegation that the entire building was demolished for the purpose of widening of the M.G.Road is denied in the counter affidavit. It is submitted that after purchasing the property in his favour under Ext.R3(a) and Ext.R3(b), the third respondent renovated, repaired and maintained the existing building in the property and commenced his business. It was thereafter that the writ petitioner purchased a small extent of land lying adjoining to and on the eastern side of the third respondent's property and began putting up a multi storied building. It is alleged that the entire construction of the petitioner is in violation of Building Rules and without obtaining consent from the neighbouring

property owners. Ext.R3(c) is the copy of the sale deed in favour of the petitioner and the same is relied on to show that even at that time, the third respondent was having ownership over 600 sq.links of land. The third respondent refers to the Commissioner's report in O.S.No. 961/2003, a suit instituted by him against the petitioner and submits that the Commissioner had submitted a report stating that there was absolutely no trespass on the part of the third respondent. It is then submitted that the petitioner had an eye on the property of the third respondent and attempted to grab the property since it has got direct frontage of the M.G.Road. It is alleged that immediately after the petitioner purchases the property, the shop room standing on the third respondent's property was set on fire by the petitioner and their henchmen. Ext.R3(d) police report is relied on in this regard. Ext.R3(e) copy of the order of the Corporation permitting the third respondent to reconstruct the destroyed portion of the building. Ext.R3(f) is the proceedings of the Corporation by which the third respondent was permitted to change the roof of the building. The property tax index sheet maintained by the Corporation and the assessment order dated 22-7-2002 are produced as Exts.R3(f) and R3 (h) to contend that portions of the building existed in the third respondent's property. It is stated that after the third respondent had effected renovation on the strength of the permit issued, Ext.R3(i)

notice was issued to the Corporation to him alleging that the building had been renovated without obtaining prior permission from the Corporation authorities. Though reply was given denying the allegations, Ext.R3(j) notice was sent by the Corporation directing the third respondent to remove the constructions. On receiving Ext.R3(j), the third respondent submitted Ext.R3(k) application for regularisation under the Kerala Building Regulation of Unauthorized Construction and Land Development Rules, 1999. It is submitted that what was considered under Ext. P1 was whether the building was liable to be demolished or not and the application under Section 509 of the Municipalities Act. It is submitted that in Ext.P1 the question as to whether regularization should be made has not been decided . In fact it has been directed to be decided as per existing Rules. Ext.P1 relates with respect to application for transfer of name of ownership of the building to the name of the third respondent. Ext.P2 judgment was in respect of regularising the application which was submitted by the petitioner on 6-1-2000. Exts.P1 and P2 in O.P.No.27946/2003 (G.O.(Rt)336/2000/LSGD and the judgment in O.P.No.33093 of 2000) are produced along with counter affidavit as Exts.R3(l) and Ext.R3(m) respectively. It is submitted that as per Ext.P2 judgment the third respondent's application for regularisation was rejected on the ground that the same was filed out of time – application being dated 6-1-

2000. It is claimed that initially the third respondent had filed an application for regularisation on 31-12-1999 it was during the stipulated period. Due to the influence of the petitioner, the above application was removed from the files and was never considered by the respondent. It was in that context that the petitioner submitted fresh application on 6-1-2000. Later on the basis of the complaints received by the third respondent which were enquired into by the Government through Regional Town Planner(STP)Vigilance it was found that the third respondent had actually submitted earlier application on 31-12-1999. It was on that application that the first respondent passed Ext.P5 order made mention of in Writ Petition No.27946/2003. The construction of the building was completed within the stipulated period as provided for the purpose of regularisation. In Ext.P2 judgment, the learned single Judge failed to appreciate the fact that the property was purchased by the petitioner in the year 2003 and that the petitioner was not owner of the adjacent property on 31-12-1999 and therefore had no locus standi to question the regularisation . It is then pointed out that the aspect that the construction of the third respondent was completed on 7-3-1999 and that an amount of Rs.1500/- was levied and realised towards compounding fee were not considered by the learned single Judge in Ext.P2. Ext.R3(n), the proceeding No.G.O.(Rt)No.2600/2003 dated

16-7-2003 is produced along with the counter affidavit. Ext.R3(o) is the copy of the regularisation order passed on the basis of the application dated 31-12-1999 and not on the basis of the application dated 6-1-2000. This Court had set aside Ext.P5 as per judgment dated 11-12-2006 on the ground that no notice was given to the petitioner. It is submitted that properly assessing true facts and considering the plea of the third respondent that the building in question is only means of livelihood, the first respondent has passed the impugned order, Ext.P8. Pursuant to Ext.P8, the building of the third respondent has already been regularised by fresh order of regularisation and Ext.R3(o) is the copy of the plan and order of regularisation. It is alleged that the only intention behind the filing of this writ Petition is to have the third respondent building demolished so that the petitioner's property come to get road frontage.

3. Later, after the amendment an additional counter affidavit was filed denying the allegations in the writ petition and the grounds raised by the writ petitioner. It is contended that the income derived by the petitioner from the business carried on in the building which is sought to be demolished accounts for only the third respondent's sole means of livelihood. It is stated that the third respondent finding it difficult to meet financial problems which inputs expenditure relating to medical treatment for himself and his wife, both of whom are said to

be sick. The third respondent relies on Ext.R3(b) commissioner's report submitted in O.P.No.10712/1999 by the Advocate Commissioner to show that the building in question was in existence even in 1999.

4. I have heard the submissions of Mr. P.Gopalakrishnan Nair, learned counsel for the petitioner and those of Mr.R.S.Kalkura, learned counsel for the third respondent. I have also heard the submissions of Mr.K.J.Mohammed Anzar, learned Government Pleader.

5. The submissions of the learned counsel were founded on the pleadings and on the various documents placed on record. On conclusion of the arguments, I directed both sides to explore possibilities of an out of court settlement even by sale and purchase of the subject land of 600 square links in Survey No.1032/1-2-2 in Vanchiyoor Village. It was reported to me at the Bar that the negotiations failed.

6. There is merit in the contention of the writ petitioner that the Government had no power to allow the application for regularisation filed by the third respondent in view of the dismissal of the same which had been filed on 31.12.1999 and the finality attained by that order of dismissal by virtue of Ext.P2 judgment of this court. In Ext.P6 judgment in the previous Writ Petition, I had clearly observed that Ext.P5 order impugned therein would not have been passed by the

Government if the Government had taken into account Ext.P2 judgment in O.P.No.33093/00 as well as the earlier order of the Government, Ext.P1 dated 22.1.2000 dismissing the application for regularisation filed by the third respondent, the Government would not have passed the order probably. Though I had directed in Ext.P6 judgment that the Government shall take a fresh decision taking into account the implications of Exts.P1 and P2, it is seen that in Ext.P8 order the Government has not complied with the said direction. Apparently, it is on humanitarian considerations that the Government has passed Ext.P8 order. But the third respondent's claim that the income which derives from the cool drink shop cum tea shop conducted by him in the building sought to be demolished by the writ petitioner as his sole means of livelihood is not supported by any convincing material and that assertion is stoutly refuted by the writ petitioner who describes the third respondent as an immensely rich business man. Regularisation of unauthorised constructions is permissible only in accordance with the provisions contained in Kerala Buildings (Unauthorised Constructions) Rules, 1999. Under these Rules, regularisation is allowed only in respect of buildings construction of which have been completed on or before 15.10.1999. Regularisation application is to be filed before the Secretary of the concerned local authority on or before 31.12.2000 who is expected to recommend the

same and forward the same to the Town Planner only if the application is in order and it is for the Town Planner to forward the same to the Government. The case of the petitioner is that the construction in question was made after 15.10.1999. It is true that in this court the third respondent has made an endeavour to make out on the basis of of a Commissioner's report that the construction was made prior to that cut off date. But that endeavour cannot succeed. As already indicated in view of the finality attained by the order passed by the Government rejecting the third respondent's earlier application for regularisation by Ext.P2 judgment of this court to which attention of the Government was drawn by me in Ext.P6 judgment.

7. The result of the above discussion is that the Writ Petition will stand allowed. Ext.P8 is quashed and the 2nd respondent is directed to facilitate demolition of the constructions made by the third respondent on his land having an extent of 600 square links in survey No.1032/1-2-2 of Vanchiyoor Village made mention of in Ext.P1 within a period of two months of receiving copy of this judgment. Demolition of the building pursuant to this judgment by the Corporation will not stand in the way of the third respondent securing his property from trespassers by putting up such fencing as may be allowed by the Corporation and from utilising the land for lawful purposes permitted by the

Corporation or for purposes for which no licence is necessary from the Corporation.

(PIUS C.KURIAKOSE, JUDGE)

ks/srd

